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usual price. Orderlies are also to be left one to every 20 Sick Men, these should be Chosen out of such as are, for want of Cloathing, from lameness & the like least fit to march with the Army but at the same time Capable of this duty. A Commissary is to be left to Supply the Sick with provision. A Commiss'd Officer for every 50 Men is to remain & a field Officer to superintend the whole, the Arms of the Sick in each Reg't are supply as far as may be necessary the deficiency in it of those fit for duty. If there are any Remaining they are to be left in the Care of the Officers who are to stay with the Sick. The necessaries are to be well Covered before the Brigades quit the Ground. Commanding Officers of Divisions and all others are to pay the Strictest attention that no Women be suffered on any pretence to get into the Waggons of the Army on the March.

			S	S	C	P
For Guard	.	.	1.	1.	-	6
In Guards	.	.	-	-	1.	7
Q'r Guard	.	.	-	-	1.	6
			—	—	—	—
			1.	1.	2.	19

(TO BE CONTINUED)

## NOTES FROM COUNCIL AND GENERAL COURT RECORDS.

By the late CONWAY ROBINSON, Esq.

(CONTINUED.)

The following commission furnishes some ground for supposing that John West may have continued governor as late as the 11th of May, 1636:

“By the governor and captain general of Virginia.

Whereas the instant danger and necessity of the colony exacteth this so strict a course, these are to authorize and further

in his majesty's name to will and require Lieut Richard Popely to take his voyage in a ——— whereof is owner and master Joseph Stratton and now riding in Charles river alias Pamunky river and with the first fair wind and weather to set sail into the Chesapian bay and into a river or creek thereof in pursuit and enquiry pf Captain Henry Fleet<sup>1</sup> and to apprehend him and bring him prisoner to the governor as also to take and bring in a vessel that one David Wittleife<sup>2</sup> is gone out in with the said David and his company and further to take and surprize any boats and vessels with those in them whom he shall find trading without commission from the governor and in case of resistance either from the said Captain Fleet or any other that he compelleth in by force, having first charged him or them in the king's name to yield themselves, by that mean if possible it may be to avoid the effussion of blood, these are also further in his majesty's name to will and require as well the said Joseph Stratton as any other of his majesty's subjects to be aiding and assisting to the best of their power and endeavors to the said Lieut Popely in their execution of the premises. Hereof fail you not as you or any of you will answer the contrary at your perils. Given under our hands at Little Town<sup>3</sup> in the co'y of James city this 11th of May 1636.

John West,

John Utye,

George Minefye,

Rich'd Kemp,

Henry Brown."

As there is a precept of Sir John Harvey bearing date on the 16th of February, 1637, it may be regarded as certain that he was acting as governor on that day if not sooner.

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<sup>1</sup> Captain Henry Fleet, a native of Kent, England, came to Virginia, prior to 1623, and was long actively engaged in trading with the Indians. For to notes on him and his family see this Magazine II, 70-76; V, 253-254.

<sup>2</sup> David Wickliffe, as the name should be, settled in Maryland about 1638, and his son David, who removed to Virginia, is stated to have been the first male child born of Protestant parents in Maryland. See William and Mary Quarterly, X, 76-77.

<sup>3</sup> Little Town or Littleton, on James river, near Williamsburg, was at one time the plantation of the Pettus family. It is believed to have been at this date the home of George Menifye.

There was an assembly in 1637 at which it was enacted that it should be adjudged felony in any person or persons to barter with the Indians for pieces, powder, shot or other arms or ammunition or any other commodities whatsoever without commission from the governor. Of this assembly Mr. Hening makes no mention; but the fact of its having been holden and of such an act having been passed, is set forth in the seventeenth act passed at the session of January, 1639, as will be seen hereafter.

There was also an assembly in October, 1638, which Mr. Hening does not mention. It appears however by the twenty ninth act passed at the said session of January, 1639, that there was an act of assembly of the 22d of October, 1638, concerning burgeses charges, and it appears by the thirty first act passed at the said session of January, 1639, that it was enacted at the grand assembly bearing date the 22d of October, 1638, that all innholders and ordinary keepers should be rated at six pound of tobacco or eighteen pence in money for a meal or gallon of beer, to be paid at the discretion of the guests. Commissions are yet extant which were issued by the governor early in 1639 to persons in Elizabeth city county to keep "a common ale house and victualing house." They provide that the party commissioned should not suffer any unlawful games to be used in his house nor any evil rule or order to be kept within the same.

Sir John Harvey continued to be governor during the greater part if not the whole of the year 1638, and bore very hardly upon a clergyman of the name of Anthony Panton<sup>4</sup>. He received from the church wardens of York and also of the parish of Chiskiack such tobacco and corn as were due unto Panton for 1638, and afterwards pronounced a sentence against Panton of a most extraordinary character. A letter of Harvey is still remaining wherein he addressed the parishioners of Chiskiack in these terms: "You the parishioners of Chiskiack, I desire you to shell the tythe corn in your custody because I shall have occasion to transport it by water for my use to Jamestown.

James city, this 19th of March 1638.

Your loving friend

John Harvey."

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<sup>4</sup> For notes of this affair see this Magazine V, 123-128, XI, 170-172, 390, 391, 393.

This serves to give some insight into the character of the man in one aspect.

The sentence of the court given at James city the 8th of October, 1638, exhibits him in another. That sentence was by Harvey the then governor and by the then council. Panton was by them pronounced published and proclaimed an exile and banished man from the colony. He was prohibited forever from claiming or enjoying any part, portion or inheritance within its limits. And he was required to depart from the colony in the first ship and not to return upon pain of death or present execution without further judgment. Of this edict all his majesty's officers and subjects were commanded to take notice, and in case of his return the court gave authority to all persons whatsoever that they or any one or more of them should or might arrest, take and execute him. We are without information of the charge which was made the pretext for such a sentence. It will be seen hereafter that those who gave this judgment were not sustained either by their successors or by the privy council in England.

Mr. Hening states that Harvey continued governor till November, 1639 (1 Stat. at Large, p. 4), but in this he is certainly mistaken. Sir Francis Wiatt came in long before November. Amongst many evidences of this fact, may be adduced the following commission and order [not entered].

After the assembly of January, 1639, Mr. Hening mentions no other until 1642. There were however other sessions of the assembly in the interval.

That there was a session in October, 1639, appears by account of the sheriff of Henrico county, wherein Henrico is not only made debtor by the act of assembly of January 6th, 1639, but is also made "Dr by act of assembly October the 21st Anno Dom. 1639" and likewise appears by the receipts to the sheriff for what he paid in discharge of those debits. For example one of those receipts dated 7th of April 1640 specified that the money received is "by the appointment of the burgesses of the assembly in October."

There was also another assembly called soon after the following proclamation, [not entered].

Sir John Harvey was acting as governor after this at least as

early as the 16th of January, 1637. For by a patent bearing date on that day, he granted to Arthur Bayley, of Curles, merchant 800 acres of land in the county of Henrico bounded southerly upon the land of Samuel Almond<sup>5</sup> westerly upon the river, northerly towards the falls and easterly in the woods. The adjoining land of Almond was 200 acres about two miles below the falls granted him for the personal adventure of himself and the transportation of three persons into the colony.

From these acts of January, 1639, and other proceedings of the same period, much interesting information may be gathered.

By the 34th act it appears that there were in the colony then 4,621 tithable persons. And the patents which yet remain shew which was done at that time to add to the population and enlarge the quantity of land in cultivation. They also shew what part of the colony the settlers were then occupying.

In March, 1639, there was granted to George Miniffee Esq'r one of the council of state 3000 acres on the north side of Charles river for the transportation into the colony of 60 persons of whom 15 were negroes; to Captain Nicholas Martian 1300 acres in the county of Charles river, to wit: 600 for adventure of himself, his wife and ten persons first year to Chiskiack<sup>6</sup> according to order of court bearing date the 8th of October, 1630, and 700 for the transportation into the colony of 14 of whom three were negroes; to Captain Richard Townsend 650 acres in the county of Charles riv'r, to wit, 350 acres for the adventure of himself, his wife and five servants the first year to Chiskiack and 300 acres for the transportation of himself, his wife and 4 persons into the colony; to Robert Felgate 400 acres in the same county for the transportation of 8 persons into the colony; to Henry Perry 2000 acres of land called Buckland<sup>7</sup> in Charles city county, to William Burdett 1050 acres in the county of Ackowmack for his own personal adventure and the trans-

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<sup>5</sup> Almond's Creek not far below Richmoud marks the situation of this grant

<sup>6</sup> Chiskiack on the present York river. It was a frontier point, exposed to Indian attack, and grants of land were offered to those who would settle there.

<sup>7</sup> "Buckland" greatly reduced in size, still retains the name.

portation of 20 persons into the colony; and to Richard Cocke gent 2000 acres of land in the county of Henrico for the transportation into the colony of 40 persons of whom one was a negro woman, 300 acres of the land being at Brema and 1700 acres upon the head of Turkey island creek called by the name of Mauborne Hills.<sup>8</sup>

In October, 1639, there was granted to Francis Martin 250 acres in the county of Accomack for the transportation of 5 persons into the colony.

In December, 1639, there was granted to Stephen Webb land in the county of James city at a place called the lower Chipoaks of which 100 acres was for the transportation of 2 persons into the colony; and to Peter Rigbye 100 acres of land in the parish of New Poquoson in the county of Charles Riv'r for the transportation of 2 persons.

In 1640 there was granted the following quantities of land to wit: in April to William Jones 100 acres in Accomack county; in May to William Allen of London Merchant 600 acres in the county of Charles river along Sandy point; in June to John Davis 450 acres in the county of Charles river upon the head of Queen's creek; in July to Stephen Gill 350 acres in the same county upon the same creek; to Thomas Harvey 950 acres in the county of James city known by the name of Harvey's neck; to John Felgate 1200 acres in the same county upon the eastern side of Chickohomini river; and to Robert Holt 700 acres in the same county on the same side of that river; in August 1640 to Henry Porter and Raphael Joyner 350 acres in the same county on the same river; to Bridges Freeman 100 acres in the same county; to John Radford 200 acres in the county of the lower Norfolk on the western branch of Elizabeth river and to William Crimage 700 acres in the county of Isle of Wight, 400 acres part thereof lying upon the head of Pagan bay creek and the residue laying upon the head of a branch issuing from the said creek; in October 100 acres in the county of the upper Norfolk upon the western branch of Nansemond river and to

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<sup>8</sup> "Brema" and "Mauborn Hills" or "Malvern Hills," Henrico county, were long owned by the Cocke family. The latter has been made famous by the great battle.

Thomas Isles 225 acres in the county of Charles river; and in November to Randall Crew 450 acres in the county of the upper Norfolk upon the head of a creek which issueth from the southern branch of Nansemond river.<sup>9</sup>

The grants usually provided that the land should be held of the king his heirs and successors as of his manor of East Greenwich in free and common socage and not in capite nor in knight services, yielding and paying seven years after the date of the grant the rent of one shilling yearly at the feast of St. Michael the Archangel to his majesty's use. And they also provided that if the grantee his heirs or assigns should not plant or seat on the land within three years after the date of the grant, it should be lawful for any adventurer and planter to make choice and seat upon the same.

[The following paragraphs within brackets are partially erased by cross lines, in the original notes.]

[A title under a patent was frequently transferred by deed. When the grantors were a husband and wife, the deed would express that "they did so in the presence of the court acknowledge a fine and suffer a recovery to be passed and recorded in as large and real manner and to all intents and purposes as is and hath been usual in the kingdom of England." There is a deed in these terms bearing date the 8th of April, 1640. After an assignment of a title under a patent, a new grant was frequently issued to the assignee. Some of the grants before specified were of this nature. It happened too sometimes that at the time of assigning a right, no patent had issued ]

It is proper to remark that the importation of persons into the colony which formed the consideration of a grant was not always immediately before the date of the grant. In making some of the grants just mentioned, Sir Francis Wiatt did what had been omitted by his predecessors. And in some instances a new grant issued in renewal of a patent formerly issued to one person and assigned by him to another.

The private deeds of parties furnish some information as to the course of dealing and mode of transferring rights. There

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<sup>9</sup> These grants are of record in the Land Office in Richmond.



is a covenant of the first of December 1637 from a citizen of London with a planter of Virginia to deliv'r him in a year, three servants viz: two men and one maid servant, to serve the planter his heir or assigns after their arrival in Virginia, for the term of four years, and a deed of the 12th of April, 1640, from an inhabitant of Virginia to a merchant of the same conveying land "in consideration of six servants and a beaver to be delivered unto him at the next year's shipping and four servants more the year after at the said time of shipping."

As indicating the mode in which a wife's interest in land was passed, may be mentioned a deed of the 8th of April, 1640, wherein the husband and wife after granting the land declared that they did "in the presence of the court acknowledge a fine and suffer a recovery to be passed and recorded in as and real manner and to all intents and purposes as is and hath been usual in the kingdom of Engiand." The entry in court in this case was in the following terms: "Miss Mary Utye this day personally appeared in court and acknowledged her free consent to a feoffment and grant of a certain parcel of tract of land from John Utye her husband to William Taylor and hath departed with all claim which she may make to the said land in right of dower or otherwise."

In the first volume of the statutes at large page 552 is the following extract from the minutes of the proceedings of the governor and council of Virginia "1639. The King's letter commanding assistance to Henry L'd Maltravers in seating Carolina, to whom it was granted." The manuscript belonging to Mr. Jefferson to which Mr. Henning refers, it may be inferred contained no more than this brief extract. The following is a copy of the King's letter and of the order taken by the court upon it [not entered].

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No. 1. 1639 to 1642.

Dated Nov'r 14th, 1639.

[Page.] 47. Proclamation by the Governor and Captain General of Virginia previous to the call of the assembly to advise upon some way of raising the value of tobacco.

69. John Harvey Knight Governor and Captain General of Virginia, 16th of Feb'y 1637 and 15th of March, 1638.

Dated 20th of April, 1639.

70. The King's letter to the Governor concerning the Lord Maltravers province of Carolina lying between the degrees of 31 and 36 northern latitude.

90. Shewing that at a court held at James City the 8th of Oct'r, 1638, Anthony Panton, Clerk, was pronounced an exile and banished from the colony.

11th of April, 1640.

93. Order made upon the arrival of William Hawley Deputy for Lord Maltravers giving liberty to such as should be willing to accompany him to the province of Carolina.

18th of April, 1640.

116, 134, 144. The court granted to persons a commission to trade with the natives for corn and other goods.

10th of June, 1640.

169. Proceedings against Thomas Stegg for assisting Richard Kemp the secretary in his departure out of the colony.

2d of June, 1640.

173. Order for a man to marry a maid whom he had bought.

1st of Aug't, 1640.

352. Order made upon the petition of William Claiborne for the erection of an office for keeping the colony seal.

14th of July, 1640.

354. Order restoring Anthony Panton, Clerk, to the half tythes of his cure and condemning the conduct of Richard Kemp.

16th of Oct'r, 1640.

356. Proclamation after act for advancing the price of tobacco.

20th Feb'y, 1640.

453. Commander and Commissioners of Accomack power to determine causes there.

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No. 2. 1660 to 1664.

28. April 30th, 1661. Sir Wm. Berkeley having occasion to go out of the colony, Francis Morrison Esq'r appointed to be

Governor and Captain General of Virginia upon the Governor's setting sail.

He continued till after the 9th of Oct'r, 1662.

15th May, 1661.

1517. 59. Henry Norwood his majesty's treasurer.

16th May, 1661.

49. A Catalogue of such books & records as belong to the secretaries office.

It states that "one of the above said books wherein the instructions from the king to S'r Francis Wyatt and S'r Wm. Berkeley and the commissions with the old act of assembly and some other records lent to the committee in October last and not returned."

50. Thomas Ludwell secretary. 16th May, 1661.

64. Sir Wm. Berkeley Governor previous to the 4th of August, 1660 and after 29th Sept'r, 1664.

81. The whole proceedings against the Quakers at a General Court held at James city 4th April, 1662.

121. Sir Wm. Berkeley returned before the 10th (and before the 8th) of Dec'r, 1662.

121. Proclamation.

126. Henry Norwood continued Treasurer till after the 20th of Sept'r, 1662. He was appointed the 22d of Sept'r in the 2d year of the reign of Charles the 2d.

129. Instructions from the king to Sir William Berkeley. Dated 12th of Sept'r, 1662.

136-140. Complaint of James Mills to the Governor making a serious charge against the Manhatons. 1662.

26th March, 1663.

161. Leave given Col. Francis Morrison Captain of the fort to be absent for three years.

16th of March, 1663.

162. Sir Wm. Berkeley styles himself Governor & Captain Gen'l of Va. & Carolina.

27th of July, 1662.

171. Deed from Allamahune the great king of Moncottecoe for a tract of land.

173. Address of the 24th of Sept'r, 1663, from the Assembly to S'r Wm. Berkeley, Gov'r.

174. Another.

199. Arrayement about quit rents.

16th Jan'y, 1663.

204. Grant to Captain John Brown to trade with America.

2d June, 1664.

228. Letter from the Governor of Maryland appointing a person to treat with the Governor of Virginia.

7th June, 1664.

230. Agreement between the Governor of Va. and the deputy from Maryland.

15th of Oct'r, 1662.

234. From the Court of New England to the secretaries of Va.

240-273. Robert Downman, New Netherland, Peter Stuyvesant, &c.

Something anterior. [C. R.]

464. 26th Sept'r, 1664. Order of court about turmoils and murthers.

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No. 3. 1663 to 1668.

Tobacco 346. Maryland & Virginia, 1666.

Here are the articles agreed on between Virginia, Maryland and Carolina.

☞ There seem to be deeds recorded in this book.

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Bonds, &c. 1677 to 1682.

1. Herbert Jeffreys was Governor and Capt. General of Va. the 24th of Jan'y, 167 $\frac{7}{8}$  and in the 29th year of his Majesty's Reign.

3. His Majesty by his letters patent bearing date the 8th of July, 1675, in the 27th year of his reign constituted and appointed Thomas Lord Culpeper Lieutenant & Governor General of his majesty's colony and dominion of Va. in America to take effect after the death surrend'er or other evoydance of Sir Wil-

liam Berkeley the Governor there "who being now lately dead" (20th of July 1667) the said Lord Culpeper this day before his majesty's commissioners took the oaths of allegiance, supremacy, &c.

By the patent Lord Culpeper was to have a salary of one thousand pounds of lawful money of England during his natural life to be paid from time to time out of the monies raised in the colony for the support of the government.

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Deeds.

This dated 25th Dec'r, 1677.

47. From the King to Herbert Jeffreys our Lieut. for the plantation of Va. explaining the terms upon which Lord Culpeper and Jeffreys were respectively to be put.

Dated the 4th of Oct'o, 1678.

78. Shewing the importation of negroes under contract with the Royal african Company.

114-140. Sir Wm. Berkeley's will dated 20th March, 1676-7 recorded 22d of Nov'r, 1678.

154. At Middle plantation the 30th of December, 1678.

Whereas Herbert Jeffreys Esq'r his majesty's Lieut. Gov'r of this colony is lately dec'd & S'r Henry Chicheley Kn't producing a commission from his sacred majesty for his being deputy Governor. This Council doth with all readiness own the said commission and declare the said S'r Hen. Chicheley deputy Governor of this colony and that he hath as full power to receive the said plantation as any Governor formerly had until his majesty's pleasure shall be known.

Deputy Governor.

Dated 28th of Feb'y, 167¾.

Comm'n "In the event absence or disabilities of our Governor thereof" as S'r Wm. Berkeley, &c.

155. Procl'n of H. C. dated at Middle plantation 30th of Dec'r, 1678.

202.-Commence papers relating to Bacon's Rebellion.

Jan'y, 1639.

144. By the 14th act, it was declared lawful and free for any person yearly to export or sell for exportation to New England or any other neighbouring plantations the seventh head of neat cattell either male or female, and the 15th act declared that when the sale of corn should be under the price of twelve shillings per barrel, it should be lawful and free, by commission from the governor to export corn either to New England or any other neighboring plantations and not otherwise. Under this act a commission issued the 28th of February, 1639, authorizing John Stratton to export corn and cattle not exceeding the exportation allowed by the said act and requiring the captain of his majesty's fort at point comfort and all other his majesty's officers that they should not molest or hinder him in the premises as also that the said captain or any other whom it might concern should take care that the said Stratton should not export any tobacco or any other prohibited commodities, which commission was to continue in force for that voyage and no longer. Two other commissions were issued one the 19th of March, 1639, and the other the 17th of August, 1640, authorizing William Hunt to transport corn, pork or bacon to the neighbouring colony of New England, which commissions were in like terms as the other except that after the words "do not export any tobacco or any other prohibited commodity" there was inserted these words "without certificate from me the governor that he hath entered into bond to his majesty's use to unlade the same at the port of London and not elsewhere according to the order in that behalf at Whitehall the second day of July, 1634, by the right honourable the lords and others of his majesty's most honourable privy Council." In a commission of the 24th of April, 1640, to Edward Robins to export corn, pork and great cattle to New England, the words so inserted in Hunt's commissions were omitted. 148-9.

In the meantime the diminution of the quantity of tobacco was kept steadily in view.

In an order of the 20th of April, 1640, directing a patent to issue for 2000 acres of land within an Inlet to the southward of the capes for the transportation of 40 persons into the colony, a

proviso was made that the grantee should put in security to the court that neither he nor his assigns should plant any tobacco upon the land without further order from the board.

The assembly was holden at James city the 25th of January, 1640, and its first act was "that all money debts made originally in the colony from planter to planter since the proclamation dated the 14th day of November, 1639, forbidding all trade for tobacco till after the next assembly shall be payable in tobacco after the rate of 12d. p. lb. either for neat cattle, sheep, goats, corn or any other commodity or provisions raised within the the colony as also workman's wages, servants hired from man to man, lands and houses with all their appurtenances." The act is so recited in an entry at a court holden at James city the 13th of April, 1641, which after such recital proceeds as follows:

"And whereas Sir Francis Wyatt.

No. 1 p. 494.

[Blank.]

In the mean time those measures were going on which the assembly of January, 1639, had directed, for the purpose of diminishing the quantity of tobacco. This appears by such certificates as the following:

"These are to certify whom it may concern that we have burned in our limits upon the account of Owen Floyd 24 hhds. of good and merchantable tobacco for which he desireth to have the like quantity spared.

April, 1640.

Nathaniel Warren.

The mark of X Will. Nottingham."

The following order of the 11th of April, 1640, shews also the manner in which the court carried out what it deemed the scope and end of the act.

[Blank.]

At a court holden at James city the 4th of February, 1640:

"Whereas the masters of ships petitioned this board that there might a stay be made of the tobacco put on board the Fleming, the court taking into consideration that the colony was in great want of necessities when the dutch ship arrives with a large

supply of useful commodities did therefore allow that the said ship should have permission to trade for old tobacco. And whereas since the arrival of the said ship, divers other ships have here arrived out of England but very late in the year, the masters whereof pretend themselves and owners much injured by such trade, notwithstanding themselves confess that they have not brought in commodities to supply the colony, neither would they acknowledge any invoice of goods to furnish the present necessities, so that if the said dutch ship had not been accordingly licensed as all others of New England, the colony had been drawn to a most intolerable exigent. It is therefore ordered that the said leave already granted unto the said Fleming shall hereby be allowed of and confirmed; it being already provided that the kings customs for all tobacco exported in the said ship shall be duly satisfied." (*Id.* p. 414.)

At a court holden at Elizabeth city the 6th of May, 1640:

Upon the petition of Captain Anthony Hobson and Abraham Sheers presenting to the board that they have great quantities of tobacco which they cannot through the want of shipping directly send for the port of London and that therefore they might have leave to transport the same by way of New England which the court upon considerations and provisos hereafter expressed did condescend unto viz: that the owner of the *Mary* and *Barbary* where they do intend to export the same should enter into bond to his majesty's use to unlade all their freight of tobacco which they shall receive within the colony at the port of New England and that the said Captain Hobson and Abraham Sheers or any other that shall lade any tobacco aboard the said ship shall enter into bond as aforesaid to transport their several quantities of tobacco according to invoice which is to be brought in upon oath of the owners of the tobacco to the port of London and there to unlade the same, not elsewhere according to the order of their lordships of his majesty's most honourable privy council in that behalf. (*Id.* p. 148-9.)

[TO BE CONTINUED.]